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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

**Freeze on CMRS Paging Applications for
Exclusive Frequencies**

WT Docket No. 96-18

To: The Commission

EMERGENCY PETITION FOR RELIEF

Frederick W. Hiort dba B & B Beepers (B & B), by its attorney, hereby files an emergency petition seeking interim relief from the application filing/processing freeze currently in place for exclusive commercial mobile radio service (CMRS) frequencies. In support whereof, the following is respectfully submitted:

1) B & B is a paging company which provides paging services in the state of Illinois on a non-nationwide exclusive CMRS paging frequency. Paragraph 227 of the Commission's Second Report and Order and Further Notice of Proposed Rule Making (Second Report and Order), 12 FCC Rcd. 2732 (1997); 62 F.R. 11616 (March 12, 1997) indicates that paging applications filed on or after the February 19, 1997 adoption date are to be dismissed by the staff without consideration.¹

¹ The Second Report and Order does not contain a textual discussion of this order. Paragraph 227 states as follows:

IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. §155(c), the Chief, Wireless
(continued...)

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Because the application filing/processing freeze is having a significant impact upon B & B's paging operations, undersigned counsel's office recently contacted the CMRS application processing staff to determine whether applications for interim authority would be entertained. The staff relied upon the Second Report and Order and informed undersigned counsel's office that while applications seeking interim authority would not be dismissed immediately, such applications would not be processed during the pendency of the Commission's review of paging auction rules adopted in the Second Report and Order. We were further advised that applications for interim operating authority would be dismissed upon resolution of the pending petitions for reconsideration of the Commission's auction rules adopted in the Second Report and Order.

2) B & B hereby requests the Commission to direct the staff that it is permissible to accept applications from carriers seeking to provide interim service to areas adjacent to a licensee's currently authorized service area.² The Commission has previously determined that

the paging industry is a dynamic and highly competitive industry that is experiencing rapid growth. More than 150 paging channels are allocated to each market, and over 600 licensed operators provide service to customers on a local, regional, or nationwide basis. In the past few years, paging subscribership has increased dramatically, but competition has kept average prices low. To meet customer needs and improve service to the public in this highly

¹(...continued)

Telecommunications Bureau, IS GRANTED DELEGATED AUTHORITY to dismiss all mutually exclusive paging applications filed as of the adoption date of this Order and grant or dismiss all non-mutually exclusive paging applications filed as of the adoption date of this Order.

² B & B thus requests that the Commission reinstate the 40 mile filing rule which was put in place in the First Report and Order, 11 FCC Rcd. 16570 (Comm'n 1996), modified to account for the interim nature of the authorization. However, B & B recommends that to meet the public's demand for paging services that existing licensees be permitted to install interim transmitters at any location from which the interference contour of the interim operation would overlap an existing interference contour.

competitive environment, paging operators need flexibility not only to make modifications within their existing service areas, but to add sites that extend the coverage of their systems into areas of new growth, such as outlying suburbs and new business centers. Even a short-term freeze has the potential to harm the paging industry and the public by deterring this growth and stifling investment. Moreover, the impact of the freeze is felt most acutely by local and regional paging systems, who are prevented from expanding while more than a dozen nationwide carriers operating in each market have no such limitation on their ability to respond to increased demand in high-growth areas. For these reasons, we believe good cause exists to grant some relief from the freeze to non-nationwide incumbent paging licensees.

First Report and Order, 11 FCC Rcd 16570, 16581-82 (Comm'n 1996) (para. 21) (footnotes omitted) (emphasis added).³

3) In view of the fact that there is no schedule has been announced as to when the Commission will issue paging licenses via auction,⁴ in view of the fact that the Commission is currently considering fundamental changes to its paging auction rules which changes will likely engender further litigation, and in view of the pent up demand for paging services, B & B requests that the Commission permit carriers to file applications seeking interim operating authority.⁵ Such

³ The modified freeze permitted incremental expansion by incumbent licensees within 40 miles of a transmitter location which was authorized as of February 8, 1996. See First Report and Order, 11 FCC Rcd 16570, 16583 (Comm'n 1996) (para. 26). The Second Report and Order terminated the limited thawing of the freeze and B & B is not permitted to expand its system at this time despite the increasing demand for its service. It is noted that nationwide carriers are unaffected by the expansion freeze and they are free to expand into any area in the country, including B & B's markets and market into which B & B would like to expand.

⁴ The Commission recently released a statement that the auction would not be held until some time after the first quarter of calendar year 1998.

⁵ Interim operating requests should be processed on a first-come first-served basis to avoid mutually exclusive situations. Also, interim operators should be permitted to grant contour extensions into the interim licensed area on an interim basis.

authorizations would be on a secondary basis to the geographic license issued in the pertinent market and interim operations would have to be terminated upon notification by the geographic licensee that it intends to commence service immediately.^{6 7} In cases in which the interim operator is also the permanent licensee, the interim license would automatically convert to a constructed facility under the permanent licensee's license.⁸

4) B & B submits that permitting interim operating authority would further the public interest by permitting existing carriers which are willing to risk capital to serve the heavy, pent up demand for paging services.⁹

⁶ In the event that on reconsideration the Commission determines to auction paging spectrum in a manner other than on a geographic basis, the interim operator would be required to cease operation upon notification by the permanent licensee, however selected.

⁷ To avoid disruption to paging subscribers, a 30 day notice to the interim service provider appears to be reasonable. Any facility which is improved via an interim contour extension would have to return the station to its pre-interim operating parameters.


⁸ Because the Commission intends that the permanent licensee will obtain the license through some auction procedure, the interim licensee will gain no advantage by constructing and operating the interim facility.

⁹ Please note that the Commission has permitted interim operations in an analogous situation, i.e., where it was unknown when the ultimate license for a market would be issued. For instance, in cellular radio licensing, when some problem prevented the tentative selectee's application from being granted, the Commission permitted adjacent carriers to serve the unserved area on an interim basis. See e.g., Third Report and Order and Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd. 7183, 7190 (Comm'n 1992) (para. 43); La Star Cellular Telephone Co., 4 FCC Rcd. 3776 (Comm'n 1989) (para. 2), aff'd, La Star Cellular Telephone Co v. FCC, 899 F.2d 1233 (D.C. Cir. 1990); see also attachment hereto, a copy of the FCC's March 8, 1996 Public Notice, Report No. CL-96-36, granting a cellular carrier interim operating authority in light of the "lengthy period of time before service can be provided to the public" and because competition serves the public interest.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the Commission direct that applications seeking interim CMRS paging authority on exclusive channels be processed on a first-come/first-served basis.¹⁰

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October 6, 1997

Respectfully submitted,
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B & B BEEPERS


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His Attorney

¹⁰ For the Commission's convenience, copies of the instant filing are being hand delivered to Daniel Phythyon, David Furth, Ramona Melson, and James Bennett.